



A BRIEF SUMMARY OF WISCONSIN'S NONMETALLIC MINING RECLAMATION PROGRAM

Nonmetallic mining is a widespread activity in Wisconsin. The variety of geologic environments provides for a diverse industry. An estimated 2,000 - 3,000 sites are mined to provide aggregate for construction, sand, gravel and crushed stone (limestone and dolomite) for road building and maintenance as well as for agricultural use as lime. A smaller number of quarries provide dimension stone for monuments, volcanic andesite for shingles, peat for horticulture and landscaping, industrial sand for export out-of-state for the oil industry and a considerable variety of materials for other uses.

The law, Chapter 295, Wisconsin Statutes, requires that the Department draft rules, Chapter NR 135, Wis. Adm. Code to implement the nonmetallic mining reclamation program. The overall goal of NR 135 is to provide for a framework for statewide regulation of nonmetallic mining reclamation. It does this by establishing uniform reclamation standards and setting up a locally administered reclamation permit program. The DNR is required to write a model ordinance for use/adoption by counties and interested municipal governments.

The law is intended to create a reclamation program only. It neither regulates active mining process nor has any effect upon local zoning decisions such as those related to the approval of new mine sites. The process of siting a mine continues to be a local matter governed under existing zoning procedures by local authorities.

COUNTY PROGRAM CREATED BY ORDINANCE

All counties are required to adopt an ordinance that establishes a reclamation program capable of ensuring compliance with the uniform state reclamation standards contained in the rule. Also, cities, towns and villages may choose to adopt the ordinance and administer a program within their jurisdiction. An ordinance must be enacted by counties within 6 months of the effective date of these rules. The Department will provide a model ordinance for use and adaptation of counties with language that is flexible enough to incorporate local requirements but specific enough to implement the standards contained in the reclamation rule.

In order to continue operating, owners of all existing mines must submit an application for a reclamation permit within 8 months after the effective date of the rule. Exemptions include: sites less than one acre, a pit on a farmer's land for personal use, excavations for highway or building construction purposes, excavation sites used in support of and on the same property as landfills and operations that are subject to the reclamation requirements of the Department of Transportation (DOT). A Memorandum of Understanding between DNR and DOT addresses the reclamation of sites covered under the DOT exemption and ensures their successful reclamation in accordance with DOT requirements. Mining operations in or adjacent to navigable waters are regulated by the DNR under Ch. NR 340, Wis. Adm. Code and thus are also exempt (to avoid duplicate regulation).



RECLAMATION PLAN

A reclamation plan must be approved within 3 years for existing mines or prior to operating a new mine. The purpose of the reclamation plan is to achieve acceptable final site reclamation to a desired land use in compliance with the uniform reclamation standards. Environmental protection during the mining process includes: topsoil salvage and storage, surface and groundwater protection, and contemporaneous reclamation to minimize the acreage exposed to wind and water erosion.

RECLAMATION STANDARDS

A very important aspect of the reclamation program is to achieve compliance by favoring performance standards rather than prescriptive standards. This serves to encourage creativity on the part of operators to develop a site-specific, cost-effective solutions.

Reclamation standards address the salvage and protection of topsoil for its use in final reclamation. The standards also address revegetation or any other site stabilization methods contained in the approved reclamation plan, and site grading (to provide a stable non-erosive surface) conducive to the establishment of vegetation. In addition, protection of waters of the state is achieved by erosion and sedimentation control featuring a policy of not having any more acreage affected by mining than is necessary to support the operation at any point in time. This is intended to keep the acreage exposed to erosion due to wind or water to a minimum. Such an approach does much to protect surface and ground water both during mining and reclamation. Based on the declared post-mining land use, a reclamation plan capable of supporting the post-mining land use and of meeting the reclamation standards will be developed by the operator and approved by the regulatory authority.

In short, the reclamation of the mine according to an approved plan will result in the approved post-mining land use. This results in environmental protection, a stable non-eroding site, productive end land use and potential to enhance habitat and increase land values and tax revenues.

FINANCIAL ASSURANCE

A surety bond or other form of financial assurance is required from the mine operator based on the cost to implement the reclamation plan. There are several alternative means of financial assurance included in the law. The rule makes it more feasible for small operators to provide financial assurance without jeopardizing the solvency of their business. An example of this would be an interest bearing account designed to grow to meet the needs of reclamation. The objective of financial assurance is to ensure reclamation. The money is to be in place to make certain that the regulatory authority can obtain the funds necessary to perform site reclamation in the event of a default.

RECLAMATION PERMIT

All mines must have a reclamation permit in order to continue mining. The reclamation permit is based on the reclamation plan and is the vehicle to ensure that all necessary steps are taken to ensure that the approved land use is achieved. The reclamation permit is to be a life-of-mine permit (no need for renewal although significant modifications may require approval). The rule allows for an automatic permit for existing mines. Any existing mine wishing to continue operation as of the eighth month after the effective date of the rule must apply for an automatic permit. To get the automatic permit, (available only for those mining operations active on August 1, 2001) an operator must complete a brief application form, pay the annual fee, and promise to obtain an approved reclamation plan and financial assurance. The timeline for completion of the reclamation plan and the financial assurance is based on an arrangement between the operator and the local regulatory authority but may not exceed a period of three years. No public hearing is required in order for existing mines to obtain a reclamation permit.

New mines must apply for and receive a reclamation permit prior to commencing operations. For any new mine and for new reclamation plans for existing mines there will be an opportunity for a public informational hearing.

DEPARTMENT TECHNICAL ASSISTANCE AND OVERSIGHT

The Department of Natural Resources must review and advise counties regarding the ability of their reclamation ordinance to meet the uniform statewide reclamation standards given in NR 135. In addition, the Department must audit all county and municipal programs to assure that they are in compliance with the reclamation standards in the rule. The Department is required by law to conduct performance audits of each county or municipal nonmetallic mining reclamation program.

The Department is required by law to become the regulatory authority in any county that fails to enact or successfully administer a nonmetallic mining reclamation program.

ENFORCEMENT

A strong emphasis will be placed on compliance assistance to prevent compliance problems. However, should violations occur, NR 135 provides for enforcement actions in addition to the obligation to comply with the rule and the reclamation plan.



PROGRAM FUNDING

The law requires that the reclamation program be self-funded through fees on active mining operations. These fees are intended to support county or municipal program administration as well as Department statewide oversight and technical support. The fee amount is based only on the unreclaimed portions of active nonmetallic mining operations. By law the county or municipal entity administering a nonmetallic mining reclamation program will collect fees to cover their costs. Counties may set and collect fees within the scope of the rule but these fees must represent, as closely as possible, actual plan review and inspection costs. In addition, fees are to be collected and forwarded to the Department to cover the DNR's statewide administrative costs. In this way the reclamation program is mandated and designed to be funded without imposing a "direct" burden on tax payers of the state.

In order to properly assess fees, on an annual basis, operators will report their unreclaimed acreage (basis of assessment of fees) to the regulatory authority each year. Further, the regulatory authority will, on an annual basis, report this and other information to the Department.

REGISTRATION

The law provides for the registration of marketable nonmetallic mineral deposits to prevent future land uses or the erection of permanent structures that would interfere with mining of the deposit. The registration of a nonmetallic mineral deposit may not prevent any land use that was permitted the day before a site was registered. Registered deposits are protected by statute from any county or local zoning or other decision that permanently interferes with nonmetallic mining at the site. This, in conjunction with wise land use planning and zoning, will help to reserve these valuable and finite resources for the needs of a future generation. To prevent spurious registration county and local government has the right to object to an improper registration and renewal.

Registration lasts for a period of ten years and may be automatically renewed for an additional ten year period. A registered geologist or engineer must certify that a marketable deposit exists on the land proposed for registration. Zoning authorities may rezone registered land only if in accordance with an approved land use plan and only if mining has not yet begun. Such rezoning cannot take effect until registration has expired.

QUESTIONS

If you have questions, please contact your regional nonmetallic mining reclamation contact or Tom Portle at WDNR, Bureau Of Waste Management, 101 South Webster, Madison, WI 53707, (608) 267-0877.

The Department of Natural Resources provides equal opportunity in its employment, programs, services and functions under an Affirmative Action Plan. If you have any questions, please write to Equal opportunity Office, Department of Interior, Washington, D.C. 20240.

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